

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

<p>WILLIAM CODY, Plaintiff,</p> <p>vs.</p> <p>DOUG CLARK, individual and official capacity; DANIEL SULLIVAN, individual and official capacity; JENNIFER DREISKE, individual and official capacity; BRITTNEY LENGKEEK, individual and official capacity; SAM BADURE, individual and official capacity; JEFFREY ELTON, individual and official capacity; JENNIFER FENOLIO, individual and official capacity; TROY PONTO, individual and official capacity; TIM REISCH, individual and official capacity; DARIN YOUNG, individual and official capacity; JOHN BENTING, individual and official capacity; MIKE LEIDHOLT, individual and official capacity; NYLA SPRINKEL, individual and official capacity; MARY CARPENTER, individual and official capacity; KELLIE WASKO, individual and official capacity; JOHN/JANE DOES #2(B), individual and official capacity; JOHN/JANE DOES #3, individual and official capacity; and JOHN/JANE DOES #2(C), individual and official capacity,</p> <p>Defendants.</p>	<p>4:22-CV-04010-KES</p> <p>ORDER DIRECTING DEFENDANTS TO RESPOND TO PLAINTIFF'S REQUEST FOR SANCTIONS AND SETTING DEADLINE FOR PLAINTIFF TO RESPOND TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT</p>
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Plaintiff, William Cody, an inmate at the South Dakota State Penitentiary, filed a pro se civil rights lawsuit under 42 U.S.C. § 1983. Docket 1. Defendants have filed two motions for summary judgment. Dockets 33, 87.

By order dated June 23, 2023, the court granted Cody's motion for an extension of time to respond to defendants' two motions for summary judgment. Docket 103. In his motion for extension of time to respond to defendants' motions for summary judgment, Cody argued that defendants had not yet responded to discovery requests made on October 28, 2022, and March 13, 2023, and that he needs these discovery responses to respond to defendants' motions for summary judgment. Docket 101 at 2. In its order granting Cody's motion for extension of time to respond to defendants' motions for summary judgment, the court ordered defendants to respond to Cody's October 28, 2022, and March 13, 2023, discovery requests by July 7, 2023. Docket 103 at 4. The day before the court entered its order directing defendants to respond to Cody's discovery requests, Cody filed a renewed motion to compel limited discovery. Docket 102. The court ordered that the parties show cause no later than August 4, 2023, why Cody's renewed motion to compel limited discovery (Docket 102) should not be denied as moot. Docket 104.

Defendants responded to the court's order to show cause on August 1, 2023. Docket 107. Defendants contend that Cody's renewed motion to compel should be denied as moot because defendants served their responses to Cody's discovery requests on August 1, 2023, the same day that they responded to the court's order to show cause. *Id.* at 2. Defendants did not request from the court an extension of time to respond to the court's June 23, 2023, order.

Defendants have not submitted any evidence that they requested and received

from Cody an extension of time. Defendants have not submitted any evidence that they advised Cody that they would be unable to comply timely with the court's June 23, 2023, order.

Cody appears to have mailed his response to the court's order to show cause before he received defendants' response. Docket 108. In his response, Cody states that he has no objection to the denial of his renewed motion to compel as moot as he now realizes that he should have filed a motion for sanctions because defendants failed to respond to his discovery requests. *Id.* at 1–2. The court construes Cody's response as a request to treat his renewed motion to compel as a motion for sanctions, which is granted. *See Sherman v. Rinchem Co., Inc.*, 687 F.3d 996, 1005–06 (8th Cir. 2012) (recognizing that a court's inherent power includes the discretion to sanction conduct which abuses the judicial process).

Thus, it is ORDERED:

1. That defendants must respond to Cody's request for sanctions because they did not timely respond to Cody's discovery requests or the court's order directing them to respond. Defendants' response must be filed no later than **August 25, 2023**. After reviewing defendants' response, the court will decide whether to schedule a hearing.
2. That Cody may, but is not required to, submit a supplemental response to the court's order to show cause (Docket 104) if he contends that defendants' responses to his discovery requests,

which were mailed to him on August 1, 2023, are incomplete. Cody's supplemental response must be filed no later than **August 25, 2023**.

3. That Cody's responses to defendants' motions for summary judgment (Dockets 33, 87) must be filed no later than **September 8, 2023**.

Dated August 11, 2023.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE